



Agenda Date: 7/23/04  
Agenda Item: LSA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

IN THE MATTER OF THE PETITION OF	)	<u>ENERGY</u>
ATLANTIC CITY ELECTRIC COMPANY FOR	)	
APPROVAL TO REFINANCE POLLUTION	)	
CONTROL REVENUE BONDS THROUGH	)	ORDER OF APPROVAL
THE ISSUANCE OF NEW POLLUTION	)	
CONTROL REVENUE BONDS	)	DOCKET NO. EF04050367

(SERVICE LIST ATTACHED)

BY THE BOARD:<sup>1</sup>

Atlantic City Electric Company ( "Petitioner" or "Company"), a public utility corporation of the State of New Jersey by petition filed with the Board of Public Utilities ( "Board") on May 21, 2004, requested authority from time to time through December 31, 2005 for certain financing transactions as described below.

**Salem County Financing Transactions**

In Docket No. EF94030089, by Order dated May 24, 1994 ( "1994 Salem Order"), the Board authorized, among other things, for the Petitioner to issue one or more series of its Pollution Control Obligations in an aggregate principal amount not to exceed \$23,150,000 ( "1994 Salem Bonds"). The 1994 Salem Bonds were issued with terms matching those of the bonds ( "1994 Salem Revenue Bonds") issued and sold by the Pollution Control Financing Authority of Salem County ( "Salem Authority"). The 1994 Salem Bonds were issued in the form of First Mortgage Bonds under Petitioner's Mortgage and Deed of Trust, as amended ( "Mortgage"). Pursuant to the 1994 Salem Order, Petitioner issued the 1994 Salem Bonds which were delivered to First Jersey Bank (now Bank of New York), as Trustee, as required under the Pollution Control Facilities Agreement dated July 15, 1984 between the Salem Authority and Petitioner. The 1994 Salem Bonds and the corresponding 1994 Salem Revenue Bonds bore a fixed interest rate of 6.15% per annum.

Commencing June 1, 2004, the 1994 Salem Bonds (and the corresponding Salem Revenue Bonds issued by the Salem Authority) are redeemable, at the option of the Company, upon not less than thirty (30) days notice. As of June 1, 2004, the 1994 Salem Bonds will be redeemable at the option of the Company at an amount equal to 102% of the principal amount thereof, together with accrued interest thereon through the date of redemption.

---

<sup>1</sup> Commissioner Frederick F. Butler did not deliberate or vote on this matter.

Petitioner has determined that redemption of the 1994 Salem Bonds (and the corresponding 1994 Salem Revenue Bonds) would result in significant savings to the Company. Petitioner believes that such savings could be achieved through the issuance of new long-term tax-exempt debt obligations to be issued by the Salem Authority ( "2004 Salem Revenue Bonds"). The 2004 Salem Revenue Bonds may be secured by First Mortgage Bonds issued under Petitioner's Mortgage or by Senior Notes issued under Petitioner's Indenture (for Senior Debt Securities) dated as of April 1, 2004 ( "Senior Note Indenture") and/or credit enhancement may be provided through the purchase of bond insurance. The decision to provide security through the issuance of First Mortgage Bonds or Senior Notes and/or to provide credit enhancement through the purchase of bond insurance will be based on cost and market conditions at the time of issuance.

Petitioner proposes that arrangements be made for the Salem Authority to issue and sell one or more series of the 2004 Salem Revenue Bonds in an aggregate principal amount not to exceed \$23,150,000, upon such terms as may be determined in the manner hereinafter described. The 2004 Salem Revenue Bonds may be issued and sold, pursuant to such arrangements, to or through underwriters, investment banking or financial institutions. The 2004 Salem Revenue Bonds will be issued under a Trust Indenture of the Salem Authority to its Trustee, in accordance with the terms designated therein.

Proceeds of the 2004 Salem Revenue Bonds will be lent to the Petitioner pursuant to a Loan Agreement between the Salem Authority and the Petitioner ( "2004 Salem Loan Agreement"). The 2004 Salem Loan Agreement will further provide, at the Petitioner's option, for (a) the issuance, by Petitioner, of a corresponding series of bonds (the 2004 Salem Bonds) which will have terms and conditions corresponding to the 2004 Salem Revenue Bonds and/or (b) the provision of credit enhancement via the purchase of bond insurance.

#### **Cape May County Financing Transactions**

In Docket No. EF94040114, , by Order dated August 22, 1994 ( "1994 Cape May Order"), the Board authorized, among other things, for the Petitioner to issue one or more series of its Pollution Control Obligations in an aggregate principal amount not to exceed \$31,500,000 ("1994 Cape May Bonds"). The 1994 Cape May Bonds were issued with terms matching those of the bonds ( "1994 Cape May Revenue Bonds") issued and sold by the Industrial Pollution Control Financing Authority of Cape May County ( "Cape May Authority"). The 1994 Cape May Bonds were issued in the form of First Mortgage Bonds under Petitioner's Mortgage. Pursuant to the 1994 Cape May Order, Petitioner issued the 1994 Cape May Bonds which were delivered to First Jersey Bank (now Bank of New York), as Trustee, as required under the Pollution Control Facilities Agreement dated November 1, 1994 between the Cape May Authority and Petitioner. The 1994 Cape May Bonds and the corresponding Cape May Revenue Bonds were issued in two series. The first series in the amount of \$25,000,000 was issued with a fixed interest rate of 7.20% per annum. The second series in the amount of \$6,500,000 was issued with a fixed interest rate of 7.00% per annum.

Commencing November 1, 2004, the 1994 Cape May Bonds (and the comparable Cape May Revenue Bonds issued by the Cape May Authority) are redeemable, at the option of the Company, upon not less than thirty (30) days notice. As of November 1, 2004, the 1994 Cape May Bonds will be redeemable at the option of the Company at an amount equal to 102% of the principal amount thereof, together with accrued interest thereon through the date of redemption.

Petitioner has determined that redemption of the 1994 Cape May Bonds (and the corresponding 1994 Cape May Revenue Bonds) would result in significant savings to the Company. Petitioner believes that such savings could be achieved through the issuance of new long-term tax-exempt debt obligations to be issued by the Cape May Authority (the 2004 Cape May Revenue Bonds and, together with the 2004 Salem Revenue Bonds, the 2004 Revenue Bonds). The 2004 Cape May Revenue Bonds may be secured by First Mortgage Bonds issued under Petitioner's Mortgage or by Senior Notes issued under the Senior Note Indenture and/or credit enhancement may be provided through the purchase of bond insurance. The decision to provide security through the issuance of First Mortgage Bonds or Senior Notes and/or to provide credit enhancement through the purchase of bond insurance will be based on cost and market conditions at the time of issuance.

Petitioner proposes that arrangements be made for the Cape May Authority to issue and sell one or more series of the 2004 Cape May Revenue Bonds in an aggregate principal amount not to exceed \$31,500,000, upon such terms as may be determined in the manner hereinafter described. The 2004 Cape May Revenue Bonds may be issued and sold, pursuant to such arrangements, to or through underwriters, investment banking or financial institutions. The 2004 Cape May Revenue Bonds will be issued under a Trust Indenture of the Cape May Authority to its Trustee, in accordance with the terms designated therein.

Proceeds of the 2004 Cape May Revenue Bonds will be lent to the Petitioner pursuant to a Loan Agreement between the Cape May Authority and the Petitioner ( "2004 Cape May Loan Agreement"). The 2004 Cape May Loan Agreement will further provide, at the Petitioner's option, for: (a) the issuance, by Petitioner, of a corresponding series of bonds ("2004 Cape May Bonds") which will have terms and conditions corresponding to the 2004 Cape May Revenue Bonds; and/or (b) the provision of credit enhancement via the purchase of bond insurance.

#### **Salem County and Cape May County Financing Transactions**

Petitioner proposes that the 2004 Revenue Bonds be issued pursuant to a tax-exempt multi-mode program whereby one or more series of the 2004 Revenue Bonds will be issued providing for a periodic redetermination of the rate of interest payable thereon which may be redetermined daily, weekly, monthly, for terms of from one to three hundred sixty-four days or for periods of twelve months or more ( "Interest Rate Modes"), and which will contain a provision for conversion, from time to time, to different Interest Rate Modes in accordance with changing market conditions. In every instance, the final maturity of the 2004 Revenue Bonds will not exceed thirty-five (35) years from the date of issue.

Petitioner further proposes to utilize a Tender Agent, an Auction Agent, a Remarketing Agent, a Trustee and a Securities Depository for the 2004 Revenue Bonds under the Book-Entry System. The respective rights and obligations, and the terms and conditions under which a Book-Entry System for the 2004 Revenue Bonds may be discontinued or agents may resign or be replaced, will be specified within the underlying agreements among Petitioner, the respective Authority, the Tender Agent, the Auction Agent, the Remarketing Agent, the Securities Depository and the Trustee, as applicable.

The Company claims that it will be able to refinance the existing debt issuances at rates considerably lower than it is currently paying. Petitioner further submits that a negotiated transaction is appropriate. Unlike fixed-rate bonds, variable rate instruments do not lend themselves to competitive bidding because rates are continually redetermined based upon then prevailing market conditions. A program having multiple Interest Rate Modes depends upon the quality and dedication of the Remarketing Agent whose credentials, track record, and continual performance are subject to review and possible replacement. For that reason, the participants to

the multiple agreements referred to above are best determined through negotiation.

Petitioner proposes that such conversions as shall be permitted by the terms and conditions of the 2004 Revenue Bonds will be permitted and authorized through the final maturity date, without further order of the Board. Petitioner would not redeem any such series of 2004 Revenue Bonds at a premium without further order of the Board, if applicable.

By letter dated July 22, 2004, the Ratepayer Advocate ("RPA") asserts that switching to a variable rate of interest puts ratepayers at risk for potentially higher interest rates in the future, and thus recommends against the variable rate refinancing at this time unless the Company can demonstrate that savings are immediately passed on to the ratepayers.

The Board believes that the concerns of the Ratepayer Advocate have merit and are accordingly addressed herein below. The immediate economic benefits from refinancing fixed rate debt with variable rate debt will be passed through to ratepayers by appropriate adjustments to the company's cost of long-term debt in the pending rate case. The Company can at any time prior to maturity switch back to fixed rates or continue with variable rates. The Company has the risk of paying higher costs if interest rates increase between rate cases. Further, the ratemaking treatment of any potentially higher interest rates are not decided in this Order but will depend on the Company's proofs in the next rate case and any counter-arguments presented by Staff and or the Ratepayer Advocate. In all scenarios the ratepayers are protected from any automatic increase in the interest rates for these securities. The Ratepayer Advocate's concerns are therefore fully resolved and ratepayers' are protected. Therefore to assure that ratepayers are protected we HEREBY DIRECT that the significant savings in debt costs, which the Company has asserted will be effectuated as a result of this refinancing, shall be reflected in the Company's pending rate case.

The Board, after investigation, having considered the record and exhibits submitted in this proceeding, being satisfied with the action proposed by to be taken by Petitioner as indicated above and finding that the transactions were made in accordance with law, are in the public interest and approving the purposes thereof, ORDERS that Petitioner be and is HEREBY AUTHORIZED from time to time through December 31, 2005 to:

1. Redeem, at its option, all or part of the 1994 Salem Bonds (and the corresponding 1994 Salem Revenue Bonds) including the premium and together with accrued interest thereon through the date of redemption;
2. Issue and deliver, at its option, one or more series of its 2004 Salem Bonds, as defined herein, in an aggregate principal amount not to exceed \$23,150,000, having terms and conditions corresponding to the 2004 Salem Revenue Bonds to be issued and sold by the Salem Authority;
3. Execute and deliver to the Salem Authority the 2004 Salem Loan Agreement and such other financing documents as may be necessary to effectuate the transactions herein contemplated;
4. Redeem, at its option, all or part of the 1994 Cape May Bonds (and the corresponding 1994 Cape May Revenue Bonds) including the premium and together with accrued interest thereon through the date of redemption;
5. Issue and deliver, at its option, one or more series of its 2004 Cape May Bonds, as defined herein, in an aggregate principal amount not to exceed \$31,500,000, having terms and conditions corresponding to the 2004 Cape May Revenue Bonds to be issued and sold by the Cape May Authority;

6. Execute and deliver to the Cape May Authority the 2004 Cape May Loan Agreement and such other financing documents as may be necessary to effectuate the transactions herein contemplated;
7. Convert, at its option, the 2004 Bonds to fixed rates without further order of the Board subject to the condition that Petitioner will seek further authorization from the Board to redeem the 2004 Bonds at a premium; and
8. Take such other action which may be necessary or desirable in connection with the transactions described herein.


This Order is subject to the following provisions:

1. Petitioner proposes, as soon as practicable after the issuance of the Pollution Control Obligations, to submit to the Office of the Economist, for informational purposes only, copies of the Loan Agreements and other related documents at such time as executed copies shall become available;
2. Following conversion to fixed rate bonds, if any, authorized herein, said Bonds shall not be redeemed at a premium prior to maturity without further Board approval;
3. This Order shall not be construed as a certification that the securities authorized to be issued for sale will be represented by tangible or intangible assets of commensurate value or investment cost;
4. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner;
5. This Order shall not affect, nor in any way limit, the exercise of the authority of this Board or of this State, in any future petition or any proceedings with respect to rates, franchises, service, financing (including method of sale of securities), accounting, capitalization depreciation, or any other matters affecting the Petitioner; and
6. The authority granted pursuant to this Order shall become null and void and of no further effect with respect to any portion which shall not have been exercised on or before December 31, 2005.

DATED: 7/27/04

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
CAROL J. MURPHY  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

## Service List

### I/M/O Petition of Atlantic City Electric Company Pursuant To N.J.S.A. 48:2-13 and 48:3-9 for Authority to Refinance Pollution Control Revenue Bonds

EF04050367

---

#### BPU

Nusha Wyner, Director  
Div. of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

#### DAG

Helene Wallenstein DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street  
Newark, NJ 07102

Donna J. Kinzel, Asst. Treasurer  
Conectiv/Atlantic City Electric  
800 King Street  
P. O. Box 231  
Wilmington, Delaware 19899

Dennis Moran  
Div. of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

#### Ratepayer

Seema M. Singh, Esq.  
Ratepayer Advocate  
Div. of the Ratepayer  
Advocate  
31 Clinton St., 11<sup>th</sup> Fl.  
PO Box 46005  
Newark, NJ 07101

Frank Kitzinger  
Conectiv/Atlantic City Electric  
800 King Street  
PO Box 231  
Wilmington, Delaware 19899

Mark Beyer  
Deputy Chief Economist  
Office of the Economist  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Diane Schulze, Esq.  
Div. of the Ratepayer  
Advocate  
31 Clinton St. 11<sup>th</sup> Fl.  
PO Box 46005  
Newark, NJ 07101

Anthony J. Kamerick  
Vice President & Treasurer  
Pepco Holdings, Inc.  
701 Ninth Street, NW  
Washington, DC 20068

Robert Wojciak  
Office of the Economist  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

**Petitioner**  
George R. Greaves  
800 King Street  
PO Box 231  
Wilmington, Delaware 19899

Randall V. Griffin, Esq.  
Conectiv  
800 King Street  
PO Box 231  
Wilmington, Delaware 19899